

Serial No. 10/616,950

GEWEHR et al.

AM200040

and (b) under 35 U.S.C. §103(a) as being unpatentable in light of the teaching of Curtze et al. (US 6,127,570). In each context, the Examiner took the position that applicants' method for controlling *Pseudocercospora herpotrichoides* in crop plants and in wheat and barley, respectively, was rendered prima facie obvious by the referenced art because the references addressed benzophenones which encompass the compounds (I) employed in accordance with applicants' method, and the references provided that the benzophenones were effective against fungi.

Applicants herewith enclose a declaration of Dr. Stierl which sets forth reasons why, from a technical point of view, the generic disclosure of the references cannot be deemed to have rendered the specific method disclosed and claimed by applicants' prima facie obvious at the time applicants made their invention. In this context, Dr. Stierl inter alia explains that the fungus which is controlled in accordance with applicants' method causes an infection which is distinctly different from the infections caused by the fungi which are mentioned in the prior art. In particular, the fungus *Pseudocercospora herpotrichoides* infects not only on the surface of the plant (ectophytic life stage) but also invades the tissue of the plant (endophytic growth), whereas the fungi referenced by Curtze et al. cause infection on the surface of the plant. Dr. Stierl also points out reasons why it is frequently not possible for a person of ordinary skill in the art to predict the effectivity of a fungicide in general and benzophenones in particular against fungi which infect the tissue of a plant based on the effectivity of the fungicide or benzophenone against a fungal disease which infects the surface of the plant rather than the tissue. In addition to those explanations, Dr. Stierl's Declaration describes investigations into the effectivity of a representative of the benzophenones of applicants' formula (I) against a variety of fungal diseases which infect the tissue of plants. As shown by the data, the representative exhibits a surprising and distinct effect when used in accordance with the method disclosed and claimed in the application but is not suited to the same extent to control other tissue infecting diseases.

In light of the foregoing and the attached it is therefore respectfully urged that the information which is provided by Claims 1 to 5 of *Sieverding et al.* and/or the teaching of *Curtze et al.* can clearly not be considered to convey the particularities of appli-

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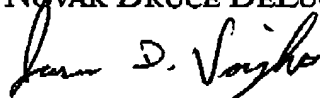
cants' method to a person having ordinary skill in the art. It is therefore respectfully requested that the respective rejections be withdrawn. Favorable action is solicited.

REQUEST FOR EXTENSION OF TIME:

It is respectfully requested that a two month extension of time be granted in this case. The respective \$450.00 fee is paid by credit card (Form PTO-2038 enclosed).

Please charge any shortage in fees due in connection with the filing of this paper, including Extension of Time fees, to Deposit Account No. 14.1437. Please credit any excess fees to such deposit account.

Respectfully submitted,
NOVAK DRUCE DELUCA & QUIGG, LLP



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Encl.: Dr. Stierl's Declaration dated January 16, 2006

JDV/BAS

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